HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.19840 OF 2006

Between:

V.G.R. Ratnanjaneyulu …Petitioner

AND

The Commissioner,
Municipal Corporation of Hyderabad,
Tank Bund Road, Hyderabad and three others.
...Respondents

: O R D E R :

Counsel for the petitioner : Sri M. Rama Rao

Counsel for respondent Nos.1, 2 and 4 : Sri G. Rama Rao

Counsel for respondent Nos.3 and 5 : Smt. G. Kavitha

26th February, 2007

Per G.S.SINGHVI, C.J.

In this petition, the petitioner has prayed for issue of a mandamus to respondent Nos.1 and 2 i.e. the Commissioner, Municipal Corporation of Hyderabad and Assistant City Planner, Circle-I, Municipal Corporation of Hyderabad to demolish the alleged illegal structures raised by respondent No.3 in the house bearing No.17-1-178/A/11, Sri Nagar Colony, Madannapet, Hyderabad.

The above noted prayer of the petitioner is founded on the following assertions:

i) that she is the owner in possession of house bearing No.
17-1-178/A/12, Sri Nagar Colony, Madannapet, Hyderabad;

ii) that her neighour, Mirza Shamim Baig (respondent No.3) constructed house bearing No.17-1-178/A/11, Sri Nagar Colony, Madannapet without taking permission or completely deviating the sanctioned plan under the layout;

iii) that respondent No.3 encroached 40 feet road existing in front of the two houses and raised construction over it, as a result of which, the width of the road has been reduced by 7 to 10 feet and the flow of water is getting blocked;

iv) that respondent No.3 is running a gym in the illegal structure and, on account of parking of vehicles by his customers in front of her gate, ingress into and egress

out of her house is blocked; and

v) that despite repeated representations, respondent Nos.1 and 2 have not taken steps to remove the illegal construction made by respondent No.3.

Sri Mohammed Farooq, Assistant City Planner, Circle-I, Municipal Corporation of Hyderabad, has filed counter-affidavit on behalf of respondent Nos.1 and 2. He has averred as under:

i) that the petitioner's neighbour has constructed the house without obtaining sanctioned plan and also constructed a shed on the road margin, which was removed on 4-7-2006;

ii) that notice dated 1-8-2006 was issued to respondent No.3 under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act') requiring him to show cause against the proposed demolition of construction;

iii) that in his reply, respondent No.3 disclosed that the house in question was constructed by Smt. Shaesta Khanam, wife of Qazi Mohammed Najamuddin and she got the same regularised vide permit No.77/7164, dated 9-9-1997 in File No.575/TP/R1/MCH/97, and, after her death, her minor son, Mohammed Ghiasuddin is the owner and that he is only the guardian of the minor;

According to Sri Mohammed Farooq, the structure existing in premises bearing No.17-1-178/A/11 comprises of first floor, which has been regularised in accordance with the policy contained in G.O.Ms.No.243, MA, dated 22-5-1996. However, one room on the second floor was constructed without obtaining sanction and

necessary action will be taken for demolition of the unauthorised construction.

In a separate affidavit filed by him, respondent No.3 has denied that he is the owner of house bearing No.17-1-178/A/11. According to him, the house site in question was purchased by his sister Smt. Shaesta Khanam through registered sale deed dated 15-1-1994; that after purchasing the site Smt. Shaesta Khanam constructed the building and got the same regularised by paying necessary permit fee vide permit No.71/7164, dated 9-9-1997, and that Smt. Shaesta Khanam died on
24-2-2002 leaving her only male child namely Mohammed Ghaisuddin as her sole legal representative and since then he has been looking after the minor child. Respondent No.3 has further averred that the ground floor was constructed prior to 1995 and the first floor was constructed in 2002. In paragraph 6 of his affidavit, respondent No.3 has denied the allegation of obstruction caused on account of the construction of house No.17-1-178/A/11 and blockage of rain water. He has also alleged that the petitioner is employed in the services of the Municipal Corporation of Hyderabad and she is coercing him to sell the house for a paltry amount.

Before proceeding further, we consider it proper to mention that by an order dated 2-1-2007 passed in WPMP.No.33742 of 2006 filed by the petitioner, leave was granted to her to implead Mohammed Ghaisuddin (minor, through his guardian Mirza Shameem Baig) as respondent No.5 and in response to the notice issued by the Court, Smt. G. Kavitha, who was already appearing on behalf of respondent No.3, has entered appearance on behalf of respondent No.5 as well.

Sri M. Rama Rao, learned counsel for the petitioner referred to the averments contained in the affidavit of the petitioner and

respondent No.2 and argued that the disputed construction is liable to be demolished because the same has been raised without obtaining sanction from the competent authority. Learned counsel emphasised that even though the construction of the ground floor made by late Smt. Shaesta Khanam may have been regularised by the Municipal Corporation, respondent Nos.1 and 2 are duty-bound to demolish the second floor because the same was erected without obtaining the sanctioned plan. Sri Rama Rao further argued that the assertion contained in the affidavit of respondent No.2 regarding demolition of the encroachment made on the road side does not reflect the true state of facts prevailing at the site and even today, respondent No.3 is running the gym, which is causing nuisance in the area.

Sri G. Rama Rao, learned counsel for the Municipal Corporation of Hyderabad submitted that the road side encroachment made in front of the house of the petitioner has already been removed and action is being taken in regard to the construction made in the second floor of premises bearing No.17-1-178/A/11. He pointed out that notice under Section 452 of the Act has already been issued and submitted that further action will be taken in accordance with law.

Smt. G. Kavitha argued that the petitioner should be non-suited because she has not approached the Court with clean hands. Learned counsel invited our attention to the averments contained in the affidavit of respondent No.3 to show that the disputed construction had been raised by late Smt. Shaesta Khanam, mother of respondent No.5, Mohammed Ghaisuddin many years ago and argued that the petitioner deliberately suppressed the facts with a view to mislead the Court in believing that the disputed construction is nascent in character.

We have given our most anxious consideration to the entire

matter. The record of the case shows that respondent No.3 filed counter-affidavit on 31-10-2006 and respondent Nos.1 and 2 filed counter-affidavit on 15-11-2006 after supplying copies thereof to the opposite counsel, but the petitioner has not filed rejoinder affidavit to controvert the averments contained in the counter-affidavits. Therefore, the writ petition will be decided on the premise that the averments contained in the counter affidavits of respondent Nos.1 and 2 and 3 truly reflect the present state of construction raised in premises bearing No.17-1-178/A/11. In paragraphs 2 and 3 of his affidavit, Sri Mohammed Farooq, Assistant City Planner, Circle-I has averred as under:

> "2. In reply to para 2 of the affidavit, this respondent is not aware about the ownership details of the petitioner and the petitioner is put to strict proof of the same. It is also a fact that the neighbour of the petitioner has constructed a house without obtaining the sanctioned plan and also constructed a shed on the road margin for car parking encroaching upon the road with iron post and zinc sheet. I submit that after receipt of the complaint dated 13-6-2006 complaining about the said encroachment, this respondent has inspected the site and finding the said shed which was constructed encroaching upon the road margin, the same was removed on 4-7-2006. However, regarding the existing house is concerned, this respondent has issued a notice asking the 3rd respondent to submit the documents including copy of the sanctioned plan, if any. I submit that the 3rd respondent approached the office of this respondent informing that the building was constructed long back and the same was regularised under the regularisation scheme. But no document is produced in proof of any such regularisation. I submit that the 3rd respondent failed to produce any proof to show that either the permission or regularisation was granted by the corporation, this respondent issued a show cause notice u/s.452 dated 1-8-2006. In response to the said

notice, the 3rd respondent had submitted a reply stating that the 3rd respondent is the guardian of orphan Mohammed Ghiasuddin and originally the property belongs to Mrs. Shaesta Khanam W/o. Mr. Qazi Mohammed Najamuddin and the said Mrs. Shaesta Khanam got the unauthorised construction regularised and thereafter she died leaving behind her only minor son Mohammed Ghiasuddin and presently the 3rd respondent is acting as guardian of the said Mohammed Ghiasuddin. I submit that she also submitted the documents to show that the unauthorised construction was regularised by the respondent Corporation. It is evident from the plan submitted by the 3rd respondent that to the extent of ground floor was regularised vide Permit No.77/7164 dated 9-9-1997 in file No.575/TP/R1/MCH/97 as per G.O.Ms.No.243, MA, dated 22-5-1996 and whereas the building existing as on today is consisting of ground + first floor and a room on the second floor. I submit that it is revealed that the first floor and the room on the second floor have no sanction from the Corporation even after obtaining the regularised ground floor. I submit that this respondent will take necessary action for demolition of the said unauthorised construction.

3. In reply to para Nos.3 to 5 of the affidavit, the allegation that this respondent did not take any action is not correct. As stated above, immediate action was taken by this respondent by removing the shed erected on the road margin on receipt of the complaint and also initiated action for removal of the unauthorised construction. Further action will be taken by this respondent by serving final notice for demolition of the said unauthorised construction. This respondent is not aware about the threats from the 3rd respondent. It is also a fact that the said building is used for running a gym. This respondent will take action as per law. I submit that there are no grounds made out by the petitioner for issuance of writ as prayed for."

Likewise, in paragraphs 3 to 6 of his affidavit, respondent No.3

– Mirza Shameem Baig has averred as under:

> "3. The further allegation that I constructed house in premises No.17-1-178/A/11 without taking permission is absolutely false. I am not the owner of the house in premises No.17-1-178/A/11. I submit that originally my sister Shaista Khanam purchased house and house site admeasuring 221 square yards in premises No.17-1-178/A/11 through registered sale deed dated 15-1-1994 bearing document No.235 of 1994. Subsequent to purchase, Shaista Khanam constructed a building consisting of ground floor in the subject property. The said building was got regularised by paying necessary permit fee vide permit No.72/7164 dated 9-9-1997 vide file No.575/TP/R1/MCH/97. Thereafter, my sister Shaista Khanam died on 24-2-2002 leaving her only male child by name Mohammed Ghaisuddin as her sole legal heir. As parents are not there, Mohammed Ghaisuddin who is aged about 13 years is living with me. At that point of time, as the minor child has no source to get income to educate himself and for other necessities, all our relatives collected some amount to provide some permanent source to the minor and constructed 1st floor over the existing ground floor. The minor Mohammed Ghaisuddin is now studying B. Pharmacy course and he is leading life depending on the rents being derived from the said house.
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> 4. I further submit that the 1st floor is constructed only on the existing ground floor strictly in the plot purchased by late Shaista Khanam and it is absolutely false to allege that the building is constructed by encroaching on the road. It is further submitted that ground floor building was constructed prior to 1995 and even 1st floor was constructed in the year 2002 itself. In fact, the house belonging to minor was situated in the dead end of the lane and some portion of the land belonging to minor was occupied by graveyard. The petitioner is well aware about the ownership and also age of the construction and for some obvious reasons, she is now raising hue and cry after lapse of so many years. In fact, the petitioner wants us to sell the building to her, who used to run a hostel in her house and we refused to sell the minor's

house to her and as such she wants to harass me in one way or the other.

5. In reply to paragraph No.3 of the affidavit, the allegations that I threatened the petitioner with dire consequences and also scolded with filthy language are absolutely false. The petitioner being employee in Municipal Corporation of Hyderabad wants to threaten us to sell away the house for paltry amount and in fact I have no authority to sell the house held by minor and I am looking after his needs being a relative.

6. In reply to paragraph No.4 of the affidavit, the allegations that due to construction made by late Shaista Khanam the drainage as well as flood water is blocked are absolutely false. The house held by Shaista Khanam was the dead end of the lane and the construction is within the plotted area purchased by her. Moreover, the construction is not causing any obstruction to drainage or flood water."

Since the aforestated averments have not been controverted by the petitioner, it must be held that,

i) house bearing No.17-1-178/A/11 is not owned by respondent No.3;

ii) that the site on which the house has been constructed was purchased by late Smt. Shaesta Khanam by registered sale deed dated 15-1-1994;

iii) that first floor of the house was constructed by late Smt. Shaesta Khanam and the same was got regularised in accordance with the policy contained in G.O.Ms.No.243, MA, dated 22-5-1996;

iv) the second floor was constructed in 2002 i.e. four years prior to the filing of the writ petition; and

v) the encroachment made on the road side has already been removed by the authorities of the Municipal Corporation.

The petitioner has not offered any explanation as to why she has made a false assertion regarding the construction of House No. 17-1-178/A/11 by respondent No.3 and why she suppressed material facts regarding ownership of the house by late Smt.Shaesta Khanam and that after her demise, Mohammed Ghaisuddin (her minor son) is the owner of the house. Since the petitioner is living in the neighbourhood, it is impossible to believe that she was not aware of the fact that the premises belongs to late Smt. Shaesta Khanam and that she has constructed the building. We can also reasonably presume that in her capacity as municipal employee, the petitioner was aware of the fact that the construction of the ground floor had been regularised by the competent authority vide permit No.77/7164, dated 9-1-1997. The contumacious nature of the petitioner's conduct is evinced from the fact that she has deliberately omitted to mention that she is an employee of the Municipal Corporation of Hyderabad.

In our considered view, by suppressing the facts which have direct bearing on the adjudication of the prayer made by her, the petitioner has disentitled herself from any relief under Article 226 of the Constitution of India. It is settled law that in exercise of power under Article 226 of the Constitution, the High Court will never come to the aid of a person who is guilty of conceding/suppressing material facts or information or making a false statement. It is most unfortunate that modern creed of litigants indulge in rampant violation of one of the basic values of life i.e. satya (truth), which has been cherished for centuries in this land of Mahavir and Mahatma Gandhi. People from different parts of the world come here to learn these fundamental principles of life i.e. truth and non-violence. However, post-independence era and particularly the last two decades have

witnessed sharp decline in these basic values of life. Materialism has over-shadowed the old ethos and quest for personal gain is so immense that people do not have any regard for the 'truth'.

Truth was the hallmark of the justice delivery system which operated in the country till the establishment of the court system under British rule. The people used to tell truth and truth only without being influenced by its consequences. In the present day judicial system the truth is perhaps the biggest casualty. Unscrupulous litigants like the petitioner leave no stone unturned to mislead the quasi-judicial and judicial authorities and the courts for material gains. The entire system has become victim of such persons. In order to meet this challenge the courts have evolved new rules, strategies and techniques. One such rule is that the court will not grant hearing to a person who does not approach it with clean hands. To put it differently, a person who touches the fountain of justice with the tainted hand or who makes an attempt to pollute the course of justice by making false or misleading statements or by suppressing facts must be shown the door at the threshold.

In **Hari Narain v. Badri Das**[1], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements

which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[2]**,** the Supreme Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], the Supreme Court declined relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court

> for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[5], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, it is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

In the result, the writ petition is dismissed. We would have saddled the petitioner with costs, but keeping in view the fact that she is a widow, we refrain from doing so.

G.S. SINGHVI, C.J.

26th February, 2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1963 SC 1558

[2] AIR 1983 SC 1015

[3] AIR 1991 SC 1726

[4] JT 1993 (6) SC 331

[5] AIR 1960 J & K 19